Civil Writ Petition 6199 of 2006

Date of decision: 28.10.2006

Paramjit Walia …Petitioner

Versus

State of Punjab and ors …Respondents

CORAM: HON'BLE MR JUSTICE S.S.NIJJAR, ACTING CHIEF JUSTICE.
HON'BLE MR JUSTICE S.S.SARON.

Present: Mr Pankaj Gupta, Advocate, for the petitioner.
Ms Charu Tuli, Sr DAG Punjab for respondent-1.
Mr IS Ratta, Advocate for respondent-2.
Ms Madhu P. Singh, Advocate for respondent-3.

S.S. SARON, J.

The petitioner seeks quashing of the order/resolution dated 31.1.2006 (Annexure P9) in terms of which the Municipal Council, Gobindgarh (respondent-2) (Municipal Council – for short) has ordered the holding of a de novo departmental inquiry against him. The petitioner also seeks the quashing of the order dated 7.6.2004 (Annexure P1) passed by the Executive Officer of the Municipal Council suspending him from service. A further prayer has been made seeking directions to pay the petitioner subsistence allowance @ 75% after the expiry of period of 6 months from the date of suspension i.e. from 7.6.2004 and to pay him the arrears at the above rates along with interest @ 18% per annum.

The petitioner was initially appointed as a Clerk in the Municipal Council (respondent-2) vide order dated 21.5.1980. Thereafter, he was promoted as Senior Clerk and vide order dated 23.10.1996, he was still further

promoted as Junior Assistant. During the period of his service, the Executive Officer of the Municipal Council vide order dated 7.6.2004 (Annexure P1) placed him under suspension. In the order placing him under suspension, it is recorded that on checking done by the President of the Municipal Council (respondent-3), the petitioner was found absent from duty and thereafter he entered into an altercation with him. In a meeting of the Municipal Council, the order passed by the Executive Officer on 7.6.2004 (Annexure P1) placing the petitioner under suspension was confirmed vide resolution No.122 dated 17.8.2004 (Annexure P2). The petitioner for the misconduct alleged against him including that of entering into an altercation with the President of the Municipal Council was charge sheeted on 6.9.2004 (Annexure P4). He submitted his reply (Annexure P5) denying the charges. The Municipal Council vide resolution dated 19.11.2004 (Annexure P6) decided to get an inquiry conducted against the petitioner from Shri Sunil Kumar Khosla, Municipal Engineer who was appointed as the inquiry officer vide order dated 7.1.2005 (Annexure P7). In terms of the said order, Shri Satish Kumar, Accountant was appointed as the presenting officer. An inquiry was conducted against the petitioner. The inquiry officer in his report dated 14.10.2005 (Annexure P8), which was submitted to the Municipal Council, concluded that charge No.2 with regard to absence from duty on 7.6.2004 was held to be proved. However, charge No.3 regarding misbehaviour with the President of the Municipal Council was held to be not proved. Charge No.4 to the effect that the petitioner had avoided receiving the order of suspension dated 7.6.2004 (Annexure P1) was found to be proved. Charge No.5 regarding his disinterest in the work while he was posted in the House Tax Branch from 20.4.2006 to 7.6.2006 was held to be not proved.

The inquiry report (Annexure P8) of the inquiry officer was considered by the Municipal Council (respondent No.2) and vide resolution No.8 dated 31.1.2006 (Annexure P9) it was resolved that the report was not based on facts. Accordingly, it was ordered that the case be got inquired de novo from the Chief Vigilance Officer, Local Self Government (CVO – for short). It is submitted that in terms of rule 9 of the Punjab Civil Services (Punishment and Appeal) Rules 1970, the procedure for taking action on the inquiry report is provided which inter alia envisages that when the punishing authority disagrees with the findings of the inquiring authority on the articles of charges, then the punishing authority shall record its reasons for disagreement on such charges. However, the Municipal Council (respondent No.2) which is the punishing authority has ordered de novo inquiry without recording any reasons for disagreeing with the report (Annexure P8) of the inquiring authority. Therefore, it is submitted that the Municipal Council cannot order de novo inquiry.

On Notice of motion, separate replies have been filed by the respondents.

Respondent No.1 State in its reply has submitted that the petitioner is working as Junior Assistant (Clerical Cadre) in the Municipal Council (respondent-2). As per Section 39 of the Punjab Municipal Act, 1911, it is submitted that the appointing and punishing authority of the non-provincialized cadre employees which includes the petitioner is the Municipal Council. No order, decision or action of the government, it is submitted, is under challenge and as such, the State is merely a proforma party. The Municipal Council (respondent-2) in its reply has submitted that the President of the Municipal Council (respondent No.3) on 7.6.2004 at about 12.45 p.m. checked the House Tax Branch of the Municipal Council and the petitioner

was found absent from duty. He, however, came back at 1.45 p.m. and approached the President to explain his position. On being told by the President that he had himself seen the petitioner roaming in the Bazaar, the petitioner entered into an altercation with the President and misbehaved with him. It is submitted that the House of the Municipal Council had considered the inquiry report (Annexure P8) in its meeting held on 31.1.2006. The Members of the House found that the report was not based on correct facts and the inquiry had not been conducted in a proper manner. The Members, exercising their democratic rights, decided that a fresh inquiry was required to be got conducted from the CVO who is an independent and competent authority for conducting the inquiry. It is submitted that a bare perusal of resolution-8 dated 31.1.2006 (Annexure P9) would show that no decision on merits of the inquiry report dated 14.10.2005 (Annexure P8) was taken by the House of the Municipal Council which, in its wisdom and in order to elicit correct facts, had resolved to get the matter inquired into afresh by the CVO. It is denied that the Municipal Council had directed the holding of further inquiry without any reason.

Respondent-3, the President of the Municipal Council in his separate reply has stated that charge-3 which is with respect to misbehaviour with him, the inquiry officer had held the same to be not proved even though he had deposed in this regard before the inquiry officer. He reiterated his stand that a clarification had been sought from the petitioner about his loitering around on the GT road during office hours. It is stated that when explanation was sought in this regard, the petitioner rather than giving any satisfactory reply started misbehaving with him; besides he is the complainant in the case. It is further stated that to corroborate the charge of misbehaviour with him (respondent-3), Mr Jagmeet Singh Sahota, Vice President of the

Municipal Council also deposed before the inquiry officer on 9.9.2005. Respondent-3 being the President of the Municipal Council, had complained against the misbehaviour of the petitioner, in order to maintain discipline amongst the officials of the Municipal Council and to ensure that they discharge their public duties to the utmost satisfaction of the public, whom he represents. It is further stated that it has been held by the Supreme Court that misbehaviour of a public servant is not to be tolerated and he is to be inflicted appropriate punishment for the same. It is primarily stated by respondent No.3 that the inquiry officer had not proved charge-3 regarding misbehaviour with the President despite the fact that he (respondent-3) had deposed before the inquiry officer and despite the charge having been substantiated by the Vice President who was present in the office on the day of the occurrence. Therefore, vide resolution dated 3.1.2006 (Annexure P9), a de novo inquiry was ordered to be got conducted from the CVO.

We have heard learned counsel appearing for the respective parties and given our thoughtful consideration to the matter. The question that requires consideration is whether a de novo inquiry can be initiated against the petitioner if the punishing authority disagrees with some of the findings recorded by the inquiry officer in his report dated 14.10.2005 (Annexure P8) without recording the reasons for disagreement. Besides, as to what is the effect of the President of the Municipal Council taking part in the deliberations of the proceedings in which de novo enquiry has been ordered against the petitioner.

The petitioner, as already noticed, is working as Junior Assistant in the Municipal Council. The service conditions of the petitioner are governed by the provisions of the Punjab Municipal Services (Recruitment and Conditions of Service) Rules, 1975 (1975 Rules – for short). Rule 1(iii)

provides that the said rules shall apply to all posts in the services specified in Appendix 'A'. Item 23 of Appendix 'A' relates to Punjab Municipal Service of Assistants/Inspectors/Head Clerks and it applies to all classes of the Municipal Committees. Rule 12 of the 1975 Rules envisages that the Punjab Civil Services (Punishment and Appeal) Rules 1970 (1970 Rules – for short) shall apply to the members so far as they are not inconsistent with the provisions of Punjab Municipal Act, 1911. 'Member' has been defined in Rule 2(k) of the 1975 Rules to mean member of a Service detailed in Appendix 'A'. Rule 9 of the 1970 Rules provides the procedure for taking action on the inquiry report. Sub rule (1) and (2) of 1970 Rules read as under:-

> "9. Action on the inquiry report – (1) The punishing authority, if it is not itself the inquiring authority may, for reason to be recorded by it in writing, remit the case to the inquiring authority for further inquiry and the inquiring authority shall thereupon proceed to hold the further inquiry according to the provisions of rule 8 as far as may be.
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> (2) The punishing authority shall, if it disagrees with the finding of the inquiring authority on any article of charge, record its reasons for each disagreement and record its own findings on such charge, if the evidence on record is sufficient for the purpose. (Emphasis added)

In terms of sub rule (1) to rule 9, the punishing authority may, for reasons to be recorded by it in writing, remit the case to the inquiring authority for further inquiry. In terms of sub rule (2), however, the punishing authority shall, if it disagrees with the findings of the inquiring authority on any of the article of charge record its reasons for each disagreement and record its own findings on such charge if the evidence on record is sufficient for the purpose.

The Municipal Council vide resolution No.8 dated 31.1.2006 (Annexure P9) has resolved that the inquiry report (Annexure P8) was considered by the House. Mr Suresh Kumar, Vice President and Smt Parwinder Kaur Sanghar, Municipal Councilor had stated that the inquiry had not been conducted on the basis of the facts and they expressed their disagreement with the report. Accordingly, it is recorded that in this case the inquiry be got conducted from the CVO, Local Government; besides they did not believe in the inquiry conducted by the Officer of the Municipal Council. The members present in the House expressed their willingness in this respect. It was unanimously resolved that the inquiry be got conducted again from the CVO, Local Government and Mr Satish Kumar, Accountant was appointed as the Presenting Officer. Therefore, it is evident that the Municipal Council, which is the punishing authority in respect of the petitioner decided to get a fresh or a de novo inquiry conducted from the CVO, Local Government without recording any reasons. The provisions of rule 9(1) of the 1970 Rules, however, provide that the punishing authority may, for reasons to be recorded by it in writing, remit the case to the inquiring authority for further inquiry. The inquiring authority shall thereupon proceed to hold further inquiry according to the provisions of rule 8 as far as may be. It is appropriate to note that the Municipal Council has not remitted the case to the inquiring authority but has entrusted the case to the CVO, Local Government for fresh inquiry. In fact, in terms of Rule 9 of the 1970 Rules, after the receipt of the report of the Inquiring Authority, the punishing authority may after recording its reasons in writing remit the case for further inquiry to the reporting authority/inquiry officer. Besides, the said rule only provides for the holding of a further inquiry by the inquiring authority and it does not provide for the conducting of a fresh or a de novo inquiry and that too by an officer other than the inquiring authority. The conduct of a de

novo inquiry is, therefore, not provided by the Statute. In ***State of Haryana and ors v. Roshan Lal Sharma*** 1970 SLR 739 (DB), a Letters Patent Bench of this Court observed that if a superior officer holds a departmental inquiry in a slip shod manner or even dishonestly, the State can take action against the superior officer and it is also open to it to prosecute in a Court of law a person once exonerated in a departmental inquiry. On the other hand, if a second departmental inquiry could be ordered without the authority of the Statute or the relevant service rules, the danger of harassment to the government officer would be immense and in the present climate of rapid political change such a course would be very demoralizing to the public servant. It was further held that dropping of certain charges against the public servant means the exoneration therefrom. The same is a quasi judicial order and is not liable to be varied at the will of the authority unless the relevant Statute or the rules give the authority the power to review. In ***Parkash Nath Saidha, Naib Tehsildar v. The Financial Commissioner (Revenue) Punjab and ors*** 1972 SLR 601 (DB), it was held that there is authority for the proposition that the fundamental principle viz. that no one shall be punished or put in peril twice for the same matter, is applicable even to orders passed on departmental inquiries. In ***KR Deb v. The Collector of Central Excise, Shillong*** 1971(1) SLR 29, it was held by the Supreme Court that Rule 15 of the Central Civil Services (Classification, Control and Appeal) Rules, 1957 on the face of it provides for one inquiry but it may be possible if in a particular case there has been no proper enquiry because some serious defect has crept into the inquiry or some important witnesses were not available at the time of the inquiry or were not examined for some reason, the Disciplinary Authority may ask the Inquiry Officer to record further evidence. But there is no provision in rule 15 of Central Civil Services Rules 1957 for completely setting aside previous

inquiries on the ground that the report of the Inquiring Officer or officers does not appeal to the Disciplinary Authority. The Disciplinary Authority has enough powers to reconsider the evidence itself and come to its own conclusion under Rule 9 of Central Civil Services (Classification, Control and Appeal) Rules, 1957. It seemed that punishing authority was determined to get some officer to report against the appellant. The procedure adopted was not only not warranted by the rules but was harassing to the appellant. It was further observed that from the material on record, a suspicion did arise that the Collector was determined to get some inquiry officer to report against the appellant therein. In ***Pawan Kumar Garg v. The Punjab Cooperative Cotton Marketing and Spinning Mills Federation Ltd and ors*** 2001(2) RSJ 484, the inquiry officer had exonerated the petitioner therein. The punishing authority disagreeing with the inquiry officer appointed a new inquiry officer with a direction to hold a de novo inquiry. It was held that a de novo inquiry cannot be ordered and only further inquiry can be ordered by the disciplinary authority. The impugned order in the said case was quashed with liberty to start the inquiry from the stage when the inquiry findings were submitted by the inquiring officer. In the case in hand, as has already been noticed, the petitioner has been exonerated of some of the charges and particularly charge No.3 which is with respect to his misbehaviour with the President of the Municipal Council (respondent-3). The petitioner was exonerated in terms of the inquiry report (Annexure P8) after full fledged departmental inquiry. No statutory provisions or rules have been brought to our notice which give the Municipal Council (respondent-2) the power to get a de novo inquiry conducted merely because it disagrees with the report of the inquiring authority. The disagreement that has been recorded is without reasons. In terms of the inquiry report (Annexure P8), the punishing authority could, after

recording its reasons in writing, remit the case to the inquiring authority for further inquiry and the inquiring authority was to proceed thereupon according to the provisions of rule 8 of the 1970 Rules. Therefore, there being a clear infraction of Rule 9 of the 1970 Rules, the impugned resolution No.8 dated 3.1.2006 (Annexure P9) is unsustainable.

It is also appropriate to note that in fact respondent No.3, who is the President of the Municipal Council, in his reply has highlighted the circumstances that the inquiry officer has held charge No.3 regarding misbehaviour with him to be not proved despite his having deposed before the inquiry officer in this regard. Besides, the said charge No.3 has also been substantiated by the Vice President of the Municipal Council. Therefore, it is to be seen whether there has been any bias on the part of respondent-3 in the administrative action taken to hold a de novo enquiry in the meeting of the House of the Municipal Council. It is now well-settled that there has to be fairness in administrative action. The surrounding circumstances are to be collated and necessary conclusion drawn therefrom as to whether there is a mere apprehension of bias or there is a real danger of bias. Besides, intention as distinguished from motive is the all-important factor. In ***Rattan Lal Sharma v. Managing Committee, Dr Hari Ram (Co-education) Higher Secondary School and ors*** AIR 1993 SC 2155, the Supreme Court considered the case where a member of the inquiry committee had deposed against the delinquent officer therein. One of the charges against the delinquent in the said case was that a particular sum on account of amalgamated funds was given to the appellant therein by one Maru Ram who was the teacher in charge of the amalgamated fund. The said sum was reported to have been used by the appellant and was unaccounted for. The inquiry committee comprised of three members and said Maru Ram was one of them and he had deposed as a witness

in the enquiry on behalf of the administration to establish the said charge despite an objection raised by the delinquent employee. Thereafter, he again joined the inquiry committee and submitted a report holding the appellant in the said case guilty of some of the charges including the charge relating to the amalgamated fund. It was observed that from the charge itself, it was apparent that Maru Ram had a pre-disposition to decide against the appellant. In the case in hand also the respondent No.3 is the President of the Municipal Council and there are allegations of misbehaviour with him by the petitioner. The inquiring authority held the said charge of misbehaviour to be not proved. However, respondent-3 being the President of the Municipal Council, had deposed in support of charge No.3 and thereafter he participated in the deliberations of the House to consider the Inquiry Report (Annexure P8) wherein the impugned decision (Annexure P9) was taken to get a de novo inquiry conducted against the petitioner from the CVO. Respondent No.3 in his reply has reiterated the stand that he had himself deposed before the inquiry officer. Besides, he sought clarification (explanation) from the delinquent officer about his loitering around on the GT road during office hours and thereafter misbehaving with him. As observed in Rattan Lal Sharma's case (supra) where one of the members of the inquiry committee had appeared as a witness against the delinquent to prove one of the charges that his bias percolated throughout the inquiry proceedings. The Supreme Court observed that the test is one of real likelihood of bias. Real likelihood of bias was attributed the meaning that there must be atleast a substantial possibility of bias in order to invalidate an administrative action.

As has already been noticed, the respondent No.3 being the President of the Municipal Council had participated in the deliberations of the House of the Municipal Council wherein a decision was taken to hold a fresh

inquiry against the petitioner. Being the President of the Municipal Council, he had a considerable say in the House. Besides, in his written statement, respondent No.3 is categoric that even though he had deposed before the inquiring authority as regards misbehaviour of the petitioner with him, the inquiry officer had held the charge to be not proved. This conduct would, therefore, lead to the conclusion that there was an intention as distinguished from motive on the part of respondent No.3 to have a de novo enquiry conducted against the petitioner in view of his strong conviction of the misconduct of the petitioner. Such an action would necessarily warrant the invalidation of the action of the Municipal Council deciding to hold a de novo departmental inquiry against the petitioner.

The contentions of the learned counsel for the petitioner with regard to the competency of the Executive Officer of the Municipal Council to place him under suspension in terms of order dated 7.6.2004 (Annexure P1) and regarding entitlement of subsisting allowance @ 75% after the expiry of six months from the date of suspension are not of much consequence. The order of the Executive Officer of the Municipal Council placing the petitioner under suspension was later confirmed by the Municipal Council vide resolution No.122 dated 17.8.2004 (Annexure P2). The petitioner has not referred to any rule by which he may be entitled to the grant of subsistence allowance @ 75% after expiry of six months from the date of suspension.

For the foregoing reasons, the resolution dated 31.1.2006 (Annexure P9) ordering de novo inquiry against the petitioner to be conducted by the CVO, Local Government is liable to be quashed. However, the effect of quashing the resolution dated 31.1.2006 (Annexure P9) ordering de novo inquiry against the petitioner is to be considered in the context as to whether the matter is required to be remitted to the stage at which the defect is pointed

out. In ***Managing Director ECIL, Hyderablad and ors v. B. Karunakar and ors*** (1993)4 SCC 727 the effect of an order of punishment when the inquiry report was not furnished to the delinquent employee was considered, it was

observed to direct reinstatement of the employee with back wages in all cases is to reduce the rule of justice to a mechanical ritual. The theory of reasonable opportunity and the principles of natural justice have been evolved to uphold the rule of law and to assist the individual to vindicate his just rights. It was observed that in call cases where the inquiry officer's report is not furnished to the delinquent employee in the disciplinary proceedings, the Courts and Tribunals should cause the copy of the report to be furnished to the aggrieved employee if he has already not secured it and give the employee an opportunity to show how his or her case was prejudiced for the non-supply of the report. In the case in hand, the defect is with regard to the action taken on the inquiry report (Annexure P8) in which the petitioner has been exonerated of some of the charges. However, the inquiry report (Annexure P8) is to be considered by the punishing authority i.e. the Municipal Council (respondent-2) in accordance with law and the procedure provided. Accordingly, the matter is to be remitted to the stage at which the defect as regards the consideration of the inquiry report (Annexure P8) has been detected and further proceedings taken from the said stage in accordance with law. Therefore, while invalidating resolution dated 31.1.2006 (Annexure P9), the Municipal Council would not be foreclosed from continuing with the departmental process from the stage at which the inquiry has been held to be vitiated.

Consequently, the writ petition is allowed to the extent that the resolution dated 31.1.2006 (Annexure P9) ordering de novo inquiry against the

petitioner shall stand quashed. However, the Municipal Council can continue with the departmental process from the stage of consideration of the inquiry report (Annexure P8) in accordance with law.

(S.S.NIJJAR)
ACTING CHIEF JUSTICE

28.10.2006. (S.S.SARON)
ASR JUDGE

WHETHER FIT FOR INDEXING : YES/NO